

REMARKS/ARGUMENTS

Claim Status

Claims 31, 41, and 51 were previously amended. Claims 48, 49, and 53-56 were previously presented. Claims 32, 33, 35, 36, 38-40, 42-44 are in their original state. Claims 1-30, 37, 45, 47, 50, and 52 have been cancelled. Claims 34 and 46 are withdrawn.

Claim Rejections 35 USC §102

In the Office Action, the Examiner stated that claims 1-33, 35, 36, 38, 43, 44, 48, 49, 51, 53, and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Brionnes et al. (GB2120228).

Applicant respectfully notes that claims 1-30 were previously cancelled. Accordingly, the rejection of claims 1-30 is moot and will not be addressed herein.

In rejecting claim 31, the Examiner stated as follows:

"Brionnes discloses a pumpable ANFO explosive mixed by various methods for use in boreholes that comprises diesel fuel with epoxidized soybean oil and ammonium nitrate. The oil separation is an inherent property of this composition" (emphasis added)

The applicant respectfully submits that the Examiner has not issued a complete and proper rejection of these claims, and, in particular, of claim 31. Applicant respectfully notes that "all words in a claim must be considered in judging the patentability of that claim against the prior art" (see MPEP 2143.03). The rejection of claim 31 does not address how Brionnes teaches each of the limitations of claim 31. Accordingly, the rejection is not properly set out. Claim 31 is the only independent claim currently in the application. If this claim is not rejected, then the dependent claims can not be rejected under either 35 U.S.C. 102(b) or 103.

In particular, referring to claim 31, the Examiner did not address the majority of step (b), which recites:

"combining the organic combustible fuel and the chemical coupling agent to produce a liquid mixture and then combining the liquid mixture with the inorganic oxidizer particles to produce a flowable ANFO explosive comprising inorganic oxidizer particles coated with the liquid mixture". (emphasis added)

The Examiner has not explained how the cited reference teaches all the limitations of claim 31 and therefore, the Examiner has not considered "all words in [claim 31]...in judging the patentability of that claim against the prior art". As the Examiner did not address all of the words or limitations in the claim, Applicant respectfully submits that the Examiner has not made a proper rejection.

In addition, the Applicant submits that, based on the undersigned's understanding of the reference, Brionnes is not capable of being an anticipatory reference. Claim 31 is directed to a method for reducing oil segregation in an ANFO explosive composition, and using the ANFO explosive composition. In rejecting the claims, the Examiner stated "Brionnes discloses a pumpable ANFO explosive...". Applicant respectfully disagrees, and submits that Brionnes does not disclose any method of making or using an ANFO explosive.

Throughout the disclosure of Brionnes, it is stated that the explosive disclosed therein is an emulsion explosive. For example, at page 1, lines 5-6, it is stated as follows.

"The invention refers to a new type of emulsion explosives composition..." (emphasis added).

In particular, the explosive of Brionnes is manufactured by dissolving the oxidizing salts in water, and *then* mixing the water with the oil (see, for example, page 2, lines 46-60). As is known to those of skill in the art, and as stated by Brionnes (page 1, lines 7-8), an emulsion explosive comprises immiscible liquids. The disclosure of Brionnes states that the explosive disclosed therein comprises an emulsion of an aqueous phase containing

dissolved inorganic oxidizing salts, and an oil phase which contains fuel (see, for example, page 1, lines 12-14). As Brionnes states that the inorganic oxidizer is dissolved in water, and mixing the different liquids to produce the emulsion explosive, the applicant questions where this reference teaches the producing a coated particle.

In contrast, claim 31 specifies that part of the method includes:

“combining the liquid mixture with the inorganic oxidizer particles to produce a flowable ANFO explosive comprising inorganic oxidizer particles coated with the liquid mixture”. (emphasis added)

Applicant requests the Examiner advise the applicant where Brionnes teaches a method including the step of preparing inorganic oxidizer particles coated with a liquid mixture of fuel and coupling agent.

In view of the foregoing arguments, Applicant respectfully submits that claim 31 is not anticipated by Brionnes. Claims 32, 33, 35, 36, 38, 43, 44, 48, 49, 51, 53, and 56 are dependent on 31, and thus the foregoing arguments apply equally thereto. As such, Applicant respectfully submits that claims 31-33 35, 36, 38, 43, 44, 48, 49, 51, 53, and 56 are in condition for allowance.

Claim Rejections 35 USC §103

In the Office Action, the Examiner stated that claims 39-42, 54, and 55 are rejected under 35 USC 103(a) as being unpatentable over Brionnes in view of Richard. Claims 39-42, 54, and 55 are dependent on claim 31, and thus the arguments applied hereinabove with respect to claim 31 apply equally thereto. Accordingly, Applicant respectfully submit that claims 39-42, 54, and 55 are in condition for allowance.


Summary

Appl. No. 10/646,930
Amdt. dated September 23, 2008
Reply to Office action of July 23, 2008

In view of the forgoing arguments, Applicant respectfully submits that the claims of the present application are in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BERESKIN & PARR

By 
Philip C. Mendes da Costa
Reg. No. 33,106
Tel: 416-957-1695